

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
February 15, 2005
6:30 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (6:30 p.m.)

II. ADJOURN TO CLOSED SESSION

1. Conference with Labor Negotiator

(Pursuant to Government Code Section 54957.6)

Agency designated representative: Charles Lawson and Cherie Rosenquist

Employee Organizations: Protech, MEA, MSA, LIUNA, MPOA, IAFF and unrepresented employees

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: January 11, 2005, and February 1, 2005

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Proclamation

- Silicon Valley Reads Month, January 2005

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. ANNOUNCEMENT OF CONFLICT OF INTEREST

XI. MOMENTS OF REFLECTION

XII. APPROVAL OF AGENDA

XIII. CONSENT CALENDAR (Items with Asterisks)

XIV. PUBLIC HEARINGS (None)

XV. REPORTS OF OFFICERS AND BOARDS

City Council

1. Approve the Mayor's Appointments and Reappointments to Commissions: Mayor Esteves
2. Approve Request from India Community Center for Endorsement and Contribution to "Bay Area Unites – Tsunami Fund" Event on Sunday, February 20, 2005: Mayor Esteves
3. Consideration and Discussion Related to Process and Timeline for City Manager Recruitment and Appointment: Councilmember Polanski
4. Library JPA Parcel Tax Ballot Measure: Information and Consider Support: Councilmember Polanski (Staff Contact: Cindy Maxwell, 586-3282)

Transportation Subcommittee

- * 5. Approve Updated Transportation Position Statements: Transportation Subcommittee (Staff Contact: Cindy Maxwell, 586-3282)

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: February 1, 2005

RA4. Approval of Agenda and Consent Calendar

RA5. Consider Public Arts Policy Funding Refinement (Staff Contact: Emma Karlen, 586-3145)

***RA6. Approve Security Fencing for the Proposed Senior Housing and County Healthcare Facility Sites and Identification Signage along North Main Street (Staff Contact: Felix Reliford, 586-3071)**

RA7. Agency Adjournment

XVII. UNFINISHED BUSINESS

6. Introduce Ordinance No. 262.1 (1) Repealing Chapter 310 of the Municipal Code; (2) Repealing Chapter 320 of the Municipal Code; and (3) Adding Chapter 310 to Title I of the Milpitas Municipal Code Establishing Regulations Governing Access to Public Meetings and Public Records, Designating City Employee Salary Information by Title as a Public Record, Regulating Lobbyists' Activities and Solicitation of Donations by Public Officials and Establishing an Open Government Commission ("Milpitas Open Government Ordinance") (Staff Contact: Steve Mattas, 586-3040)
7. Consideration of Amendment to City Council Handbook Sections Related to Appointment Procedures for Boards and Commissions, City Council Committees and Outside Agency City Council Positions (Staff Contact: Steve Mattas, 586-3040)
8. Approve Gateway Sign Pilot Project Conceptual Design and Location (Staff Contact: Liz Racca-Johnson, 586-3306)
9. Consideration of Response from City Attorney to the Possible Application of the Brown Act to Meetings of the Terrace Gardens Corporation Board of Directors and Consideration of Specific Action Items First Raised by Councilmembers at February 1, 2005, City Council

Meeting in Order to Provide Staff with Direction on What Information and Reports Should be Brought Back to the City Council for Further Consideration

XVIII. NEW BUSINESS

- 10. Receive Update on Midtown Transit Sub-Area Visioning Project for the 364-acre Area Around the Light Rail and Future Montague/Capitol BART Stations (Staff Contact: Tambri Heyden, 586-3280)**
- 11. Receive Update on the Expansion (Phase II) of the Calpine Los Esteros Critical Energy Facility, Peaker Plant, Located West of the City of Milpitas Across Coyote Creek in the City of San Jose (Staff Contact: Troy Fujimoto, 586-3287)**
- * 12. Direct Staff To Enter Discussions With Ola's Exotic Coffee Inc. On Expansion Incentives (Staff Contact: Cindy Maxwell, 586-3282)**
- * 13. Approve the Budget Transfer of \$3,100.00 from Holding Account HA 1377-2500 to 100-163-4221 to Purchase Child Abuse Prevention Magnets/Lapel Pins (Bonnie Greiner, 586-3225)**

XIX. ORDINANCES (None)

XX. RESOLUTIONS

- * 14. Adopt Resolution Granting Approval to Submit a Grant Application to the Federal Emergency Management Agency for the 2005 Pre-Disaster Mitigation Grant Program: Sports Center Gym Improvements (Project No. 8160) (Americo Silvi, 586-2810 and Greg Armendariz, 586-3401)**
- * 15. Adopt Resolution Granting Approval to Submit a Grant Application to the Federal Emergency Management Agency For the 2005 Pre-Disaster Mitigation Grant Program: South Milpitas Water Line Replacement, Project No. 7098 and Water System Seismic Improvements (Project No. 7100) (Staff Contact: Doug De Vries, 586-3313)**
- * 16. Adopt Resolution Granting Initial Acceptance: Interim Senior Center Kitchen and Internal Improvements (Project No. 8151) (Staff Contact, Mark Rogge 586-3403)**
- * 17. Adopt Resolution Granting Final Acceptance: Main Fire Station Replacement (Project No. 8089) (Staff Contact: Greg Armendariz, 586-3401)**

XXI. BIDS AND CONTRACTS

- * 18. Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: 2005 Street Resurfacing Project (Project No. 4223) (Staff Contact: D. De Vries, 586-3313)**
- * 19. Authorize City Manager to Execute Agreement Amendment #2: CalRecovery, Inc. (Staff Contact: Darryl Wong, 586-3345)**
- * 20. Approve Grant Augmentation and; Approve Contract Change Order; Coyote Creek Trail, Reach 1 (Project No. 4206) (Staff Contact: Greg Armendariz, 586-3401)**
- * 21. Authorize the Acting Assistant City Engineer to Execute Amendment to Pacific Gas & Electric Company Authorization Letter, Approve Agreement Amendment, Korve Engineering; Approve Budget Appropriation: Abel/Calaveras Right Turn Lane Project (Project No. 4186) (Staff Contact: Julie Waldron, 586-3314)**

- * 22. **Authorize the Interim City Manager to Execute the Agreement: HMH Engineers, South Park Victoria Drive Pavement Rehabilitation (Project No. 4225) (Staff Contact: Doug De Vries, 586-3313)**
- * 23. **Approve Purchase of Replacement Digital Voice Recorder for the 911 Emergency Communications Center (Staff Contact: Bill Marion, 586-2701)**

XXII. CLAIMS AND DEMANDS

- * 24. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

XXIII. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 1, 2005, AT 7:00 P.M.**

CITY OF MILPITAS
Agenda Reports
Milpitas City Council Meeting
February 15, 2005
6:30 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

XIV. PUBLIC HEARINGS (None)

XV. REPORTS OF OFFICERS AND BOARDS

City Council

1. Approve the Mayor's Appointments and Reappointments to Commissions: Mayor Esteves

Background: Mayor Esteves is recommending the following appointments and reappointments:

Bicycle Commission

- Appoint Alternate Miljon Buquing to the existing vacancy with a term expiring August 2007.
- Move Kayci Nguyen from Alternate No. 2 to Alternate No. 1 with a term expiring August 2006.
- Appoint Eugene Simmons to the Alternate No. 2 position with a term expiring August 2005.

Citizens Emergency Preparedness Advisory Commission

- Appoint Alternate Michael Berryhill to an existing vacancy with a term expiring June 2006.
- Move John Pilger from Alternate No. 2 to Alternate No. 1 with a term expiring June 2006.
- Appoint Nancy Gampon to the Alternate No. 2 position with a term expiring June 2005.

Community Advisory Commission

- Appoint Alternate Jenifer Lind to an existing vacancy with a term expiring January 2008.
- Move Danny Fang from Alternate No. 2 to Alternate No. 1 with a term expiring January 2007.
- Move Michael Queenan from Alternate No. 3 to Alternate No. 2 with a term expiring January 2006.
- Appoint Nelson Villegas to the Alternate No. 3 position with a term expiring January 2007.
- Appoint Reena Choudhury to the Alternate No. 4 position with a term expiring January 2006.

Economic Development Commission

- Appoint Alternate Tomo Tuong to an existing vacancy with a term expiring April 2008.
- Appoint Alternate Charlene Tsao to an existing vacancy with a term expiring April 2007.
- Appoint Pat Songsiri to the Alternate No. 1 position with a term expiring April 2007.
- Appoint Minh Nguyen to the Alternate No. 2 position with a term expiring April 2006.

Mobile Home Park Rental Review Board

- Appoint Florence Romito to an existing vacancy with a term expiring June 2007.

Parks, Recreation & Cultural Resources Commission

- Appoint Alternate Kathryn Gray to an existing vacancy with a term expiring June 2007.
- Appoint Alternate Raymond Serena to an existing vacancy with a term expiring June 2005.
- Appoint Dave Sandhu to the Alternate No. 1 position with a term expiring June 2006.
- Appoint Robert Burrill to the Alternate No. 2 position with a term expiring June 2007.

Recycling & Source Reduction Advisory Commission

- Appoint Alternate Patrick Yung to an existing vacancy with a term expiring October 2007.
- Move Eulalio Mercado from Alternate No. 2 to Alternate No. 1 with a term expiring October 2006.

Telecommunications Commission

- Appoint Alternate Aaron Ettinger to an existing vacancy with a term expiring January 2007.
- Appoint Satish Kuman Bansal to the Alternate No. 1 position with a term expiring January 2007.
- Appoint Syed Afar Ali Bilgrami to the Alternate No. 2 position with a term expiring January 2006.
- Reappoint Albert Alcorn, William Lam, Paul Peterson, and Gunawan Alisantosa to new two-year terms expiring January 2007.

Youth Advisory Commission

- Appoint Liberty Hilario to the Alternate No. 2 position with a term expiring September 2005.
- Appoint Lorden Fok to the Alternate No. 3 position with a term expiring September 2005.
- Appoint Roxane Lachance to the Alternate No. 4 position with a term expiring September 2005.

Copies of current applications for these commissions are included in the Council's agenda packets.

Recommendation: Approve the Mayor's appointments and reappointments.

2. Approve Request from India Community Center for Endorsement and Contribution to "Bay Area Unites – Tsunami Fund" Event on Sunday, February 20, 2005: Mayor Esteves

Background: Mayor Esteves is requesting the Council officially endorse the "Bay Area Unites – Tsunami Fund" event on Sunday, February 20, 2005, at the HP Pavilion in San Jose from 2:00 p.m. to 5:00 p.m. While no financial contribution is required, Mayor Esteves is asking that the Council approve a contribution of \$300.00 from the Council's Community Promotions budget. Additional information describing the event is included in the Council's agenda packets.

Recommendation: Approve the Mayor's recommendations to endorse the "Bay Area Unites -- Tsunami Fund" event on Sunday, February 20, 2005, and provide a contribution of \$300.00 from the Council's Community Promotions budget.

3. Consideration and Discussion Related to Process and Timeline for City Manager Recruitment and Appointment: Councilmember Polanski

Background: Councilmember Polanski has requested that an item be included on the agenda to allow the City Council to discuss the process and timeline related to the recruitment and appointment of a permanent City Manager.

Recommendation: Consider Councilmember Polanski's request and provide direction to staff.

4. Library JPA Parcel Tax Ballot Measure: Information and Consider Support: Councilmember Polanski (Staff Contact: Cindy Maxwell, 586-3282)

Background: On January 27, 2005, the Santa Clara County Library Joint Powers Agency (JPA) placed two measures on the May 2005 special election relating to library funding. The first measure would replace the existing parcel tax with an identical parcel tax for another ten years. The current parcel tax will expire July 1, 2005 and is set at \$33.66 for a single-family parcel. It generates over \$5 million annually or about 20 percent of the JPA's operating budget. The second measure would add another \$12 to the parcel tax and would take effect only if the first measure is approved by the voters. Both measures must have a two-thirds approval by the voters to pass.

If the Council desires to support Measure A, staff should be directed to place a resolution of support on the next Council agenda for formal approval.

Recommendation: Consider support of Santa Clara County Library District JPA May 2005 tax measures and direct staff accordingly.

Transportation Subcommittee

*** 5. Approve Updated Transportation Position Statements: Transportation Subcommittee (Staff Contact: Cindy Maxwell, 586-3282)**

Background: The City Council maintains a set of transportation statements that clarify the City's position on specific transportation issues and projects in a consistent and clear fashion. The Statements are updated at least annually. The proposed updates were reviewed and recommended for approval by the Transportation Subcommittee at their January meeting. Following are the major changes to the statements:

- References the City's preferred design for the Montague BART station.
- Updates the design options under consideration for the BART line at Dixon Landing Road.
- Deletes references to completed projects such as the BART Environmental Impact Report and construction of the light rail project.
- Mentions the City will develop a Transit Area Plan around the Montague BART station.
- Indicates the City will consider a traffic impact fee.
- Consolidates text discussing similar issues on freeway interchange projects.
- Indicates the City will pursue alternative projects to the bike/pedestrian over crossing at the Union Pacific rail tracks.

Recommendation: Approve the proposed updates to the Transportation Position Statements.

XVI. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor

RA2. Roll Call

RA3. Approval of Minutes: February 1, 2005

RA4. Approval of Agenda and Consent Calendar

RA5. Consider Public Arts Policy Funding Refinement (Staff Contact: Emma Karlen, 586-3145)

Background: On October 19, 2004, the City Council approved the Public Arts Policy Concept presented by staff. The concept plan calls for dedication of 1.5% of the City's gross annual Capital Improvement Project Budget for the acquisition and installation of Public Artworks. To establish initial funding, the City in partnership with the Milpitas Redevelopment Agency shall provide an additional \$125,000 annually for the Public Arts Fund for each of the first 4 years of the Public Arts Program.

Since then, staff has drafted a Public Arts Policy to be approved by the Arts Commission and eventually to be presented and approved by the City Council. In evaluating the funding portion of the draft Public Arts Policy, staff noted two important budget concerns regarding the Capital Improvement Project Budget that require the Council's consideration.

The City's Capital Improvement Project Budget typically includes Water and Sewer Infrastructure projects that are funded by the user fees paid by ratepayers. The City developed a Utility Financial Master Plan which was adopted by the Council in April 2003. The Master Plan includes 20-year financial projections for each utility and recommends financial targets for the first 10 years. The Master Plan, however, did not anticipate the Public Arts Policy and, therefore, had not incorporated the funding requirement in future rate adjustments.

The second issue in applying 1.5% of the Capital Improvement Project Budget is the anticipation of major capital improvement projects in the Midtown Area in the next four years. Based on information provided by Engineering, approximately \$80 million of the Redevelopment Agency bond proceeds will be used to fund major projects such as the Library, parking garages, Main Street and Abel Street reconstruction in the next four years. The fiscal impact of 1.5% of these capital improvement projects will be approximately \$1.2 million.

Due to budget concerns of utility rate adjustments and funding of major capital projects from bond proceeds, staff proposes refinement to the funding portion of the Public Arts Policy as follows:

1. Exclude utility and enterprise fund projects from the definition of the City's gross annual Capital Improvement Project Budget for the purpose of funding Public Arts.
2. Establish an initial funding source for the Public Arts Program by providing \$125,000 annually in the first four years, upon development of the Public Arts Program Master Plan.
3. Resume funding 1.5% of the Capital Improvement Project Budget after the initial four years.

Recommendation: Consider the proposed Public Arts Policy funding refinement and provide direction.

***RA6. Approve Security Fencing for the Proposed Senior Housing and County Healthcare Facility Sites and Identification Signage along North Main Street (Staff Contact: Felix Reliford, 586-3071)**

Background: At its meeting on September 7, 2004, the Redevelopment Agency approved a preliminary site plan for the development of a 103-unit senior housing project located at 163 Main Street. The Redevelopment Agency's approval included the preservation and on-site relocation of the DeVries/Dr. Smith House to add to the development and serve as an asset to the senior housing project. Recently, staff conducted a site inspection of the DeVries/Dr. Smith House and notice vandalism (broken stained glass windows and fixtures and broken cellar door)

and homeless individuals sleeping under the front porch. Also, staff was informed that a delivery truck accidentally backed up into the house causing minor damage. The stained glass windows are part of the original 1920's construction of the house and would be expensive to repair and/or replace. Given the historical significance of the DeVries/Dr. Smith House to the community and the desire to incorporate the structure into the senior housing project, there is concern about further vandalism and damage to the structure, which will negatively impact its historical significance.

Adjacent to the Senior Housing Project the County of Santa Clara Healthcare Facility will be constructed. This site has undergone environmental testing for contaminated soils and materials prior to the County building their healthcare facility. Given the future construction of projects in the North Main Street Area, there is concern that this vacant site will be vulnerable to dumping, which could require further environmental testing and financial costs to the city. To prevent any future negative impacts to both sites, staff is requesting authorization from the Redevelopment Agency to provide a chain link security fence around both sites.

The security fence would allow ingress and egress to both sites as needed by the County, City staff and future contractors and developers. The Senior Housing site already contains some existing fencing around the north and west property lines. The security fencing being proposed by staff would be along the North Main Street street frontage North Main Street and run parallel to the Calaveras overpass. A site map identifying the proposed location of the security fence is included in the Agency's agenda packet.

Staff has contacted the County staff regarding the security fence and they have no objections. Once their contractor is hired, their portion of the fence will be removed and their contractor will be responsible for the security of the site.

Along with the security fence, staff would also recommend an identification sign on the senior housing site to inform the public about the future development being proposed on the site. The proposed sign would be the same as the sign across the street on the library site.

It is estimated that the security fence and identification sign would cost approximately \$12,000. There are sufficient funds in the Senior Housing Project budget to accommodate this expense.

Recommendation: Approve funding allocation for security fence and one identification sign around the proposed Senior Housing and County Healthcare Facility sites in an amount not to exceed \$12,000.

RA7. Agency Adjournment

XVII. UNFINISHED BUSINESS

- 6. Introduce Ordinance No. 262.1 (1) Repealing Chapter 310 of the Municipal Code; (2) Repealing Chapter 320 of the Municipal Code; and (3) Adding Chapter 310 to Title I of the Milpitas Municipal Code Establishing Regulations Governing Access to Public Meetings and Public Records, Designating City Employee Salary Information by Title as a Public Record, Regulating Lobbyists' Activities and Solicitation of Donations by Public Officials and Establishing an Open Government Commission ("Milpitas Open Government Ordinance") (Staff Contact: Steve Mattas, 586-3040)**

Background: The proposed ordinance presented by Councilmember Gomez establishes procedures governing access to public meetings and public records. The proposed ordinance repeals Chapters 310 and 320 of the Municipal Code, and incorporates Chapter 320, designating city employee salary information by title as a public record, into a new Chapter 310, which shall be known as "The Milpitas Open Government Ordinance."

If adopted, the ordinance would establish a presumption of public accessibility to public meetings and records, and would provide the public greater access to such meetings and records than is currently required under state law. The ordinance would establish a set of requirements for the posting and content of meeting agendas and public notices. It sets forth regulations governing the format of disclosure of information regarding closed sessions, requires the audio and video recordings of all closed sessions, provides guidelines for public testimony and participation of the public and public officials in open meetings of City policy bodies.

In addition, the ordinance would govern the release of public records and information. It sets forth guidelines and regulations for the release of public records, justifications for withholding of public information, and maintenance of an index of records. It also establishes an appeal process should there be difficulties in accessing non-exempt public records, establishes guidelines for the release of oral public information, and imposes registration and reporting requirements for lobbyists.

The ordinance establishes an Open Government Commission comprised of five members appointed by the City Council. The Commission would work to ensure practical and timely implementation of the ordinance, and would additionally serve as the adjudicatory body charged with conducting administrative hearings to resolve complaints from the public alleging violations of the Open Government ordinance.

Finally, staff requests further direction from the Council, per Councilmember Gomez's request at the Council's January 4, 2005, meeting, as to what extent senior staff meetings shall be made open to the public, whether periodically, or more or less frequently.

Recommendation:

1. Provide direction to staff regarding public access to senior staff meetings.
2. Motion to waive reading beyond the title for Ordinance No. 262.1.
3. Motion to introduce Ordinance No. 262.1 (1) repealing chapter 310 of the Municipal Code; (2) repealing chapter 320 of the Municipal Code; and (3) adding Chapter 310 to Title I of the Milpitas Municipal Code establishing regulations governing access to public meetings and public records, designating city employee salary information by title as a public record, regulating lobbyists' activities and solicitation of donations by public officials and establishing an Open Government Commission ("Milpitas Open Government Ordinance").

7. Consideration of Amendment to City Council Handbook Sections Related to Appointment Procedures for Boards and Commissions, City Council Committees and Outside Agency City Council Positions (Staff Contact: Steve Mattas, 586-3040)

Background: This item was considered at the January 18, 2005, City Council meeting and no action was taken. At the City Council meeting of December 7, 2004, the City Council created an Appointments Subcommittee to make recommendations to the Mayor and City Council regarding the appointment of Councilmembers to City Council Committees, City Council Liaison positions, to outside agencies and regarding appointments to City Commissions. The City Council also appointed Councilmember Livengood and Vice Mayor Gomez to the newly-formed subcommittee. At the City Council meeting of January 4, 2005, the City Council provided the City Attorney with direction to amend the City Council Handbook section related to Council Committees, liaison, and outside agency appointments and board and commission appointments to reflect the advisory role of the newly-created subcommittee in the appointment process.

The attached amendment to the City Council Handbook would add language to the sections related to boards, regional boards, ad hoc and standing subcommittees and commissions to explain the advisory role of the Council Subcommittee in the appointment process. Under the proposed amendment, the Subcommittee would make appointment recommendations to the Mayor, to be presented to the Mayor and City Council at a City Council meeting, at which time, with the Mayor's concurrence, the recommendations would be presented to the City Council by the Mayor for consideration and action.

Recommendation: Consider the proposed amendment and provide direction.

8. Approve Gateway Sign Pilot Project Conceptual Design and Location (Staff Contact: Liz Racca-Johnson, 586-3306)

Background: At the September 7, 2004, City Council meeting, staff identified five minor gateways to the City subject to an entry marker sign. These gateways are collector streets that cross over the city limits of Milpitas from adjacent communities. The locations include: 1) Piedmont Road at Landess Avenue, 2) North Milpitas Boulevard at the city's northern limits, 3) South Park Victoria Blvd. at Landess Avenue, 4) Capitol Avenue at the city's southern limits and 5) South Main Street at Montague Expressway. Piedmont Road was selected as the first location for implementing the sign pilot program.

Two sign concepts have been developed. Staff will provide a brief presentation at the Council meeting, and recommend a concept for the Piedmont location. Both concepts are made from concrete and have the same theme colors as the City Hall Building.

The estimated price to construct the sign at Piedmont Road is approximately \$20,000.00.

Staff recommends approval of a new CIP project number, CIP No. 4227, and there are sufficient funds in the Street Fund for this project.

Recommendation:

1. Approve the selected concept design for the Piedmont at Landess location.
2. Approve new CIP Project No. 4227 for the Gateway Sign Pilot Program and appropriation of \$20,000.00 into this project from the Street Fund.

9. Consideration of Response from City Attorney to the Possible Application of the Brown Act to Meetings of the Terrace Gardens Corporation Board of Directors and Consideration of Specific Action Items First Raised by Councilmembers at February 1, 2005, City Council Meeting in Order to Provide Staff with Direction on What Information and Reports Should be Brought Back to the City Council for Further Consideration

Background: At its meeting of February 1, 2005, the City Council provided the City Attorney with direction to prepare a legal opinion as to whether the Board of Directors of Terrace Gardens is subject to open meeting and notice requirements of the Brown Act. Pursuant to that request, the City Attorney's office prepared a memorandum analyzing the issue, which has been transmitted to members of the City Council under separate cover.

During discussion of the agenda item related to the application of the Brown Act to the Terrace Garden Board of Directors, Councilmember Giordano raised a number of issues related to the operation of the Terrace Gardens Board of Directors, the Corporation's bylaws and the Regulatory Agreement with the City, and asked that they be added to a future agenda. In addition, other members of the City Council also raised issues that they wanted to be included in a future agenda for further consideration. All of these items are listed below. If provided with specific direction from the City Council, staff can gather information relevant to these requests, and prepare memoranda addressing the specific issues raised. The issues include the following:

- 1) Consideration of potential request from Councilmember Giordano that, should the City Attorney conclude that the Terrace Gardens Board of Directors is not subject to the open meeting laws of the Brown Act, the City should act under the authority of the Regulatory Agreement's provision that the Board shall consent to regulation by the City to require that the Board of Directors adhere to the Brown Act.
- 2) Consideration of request for an amendment to the Terrace Gardens bylaws requiring that any amendment to the bylaws be approved by a majority of the City Council.

- 3) Consideration of the status of Terrace Gardens Board members appointed in 2004 and 2005.
- 4) Consideration of providing direction to the City Council Appointment Subcommittee to return with a recommendation for appointing a second Councilmember to the Terrace Gardens Board of Directors as provided for in the Terrace Gardens corporate bylaws.
- 5) Consideration of directing staff to prepare a status report related to the submission of Terrace Garden annual audit documents for 2002, 2003 and 2004 to the City.
- 6) Consideration of directing staff to prepare a status report related to submission of Terrace Garden Budget documents for 2004 to the City and whether the City Council has approved those documents.
- 7) Consideration of requesting staff to review and report to the City Council with respect to complaints about meals at the Terrace Gardens facility.
- 8) Consideration of directing the City Attorney to review the corporate Bylaws and the Regulatory Agreement with Terrace Gardens to determine the Board of Directors' obligations under both documents, determine any areas of non-compliance by the Board of Directors, and outline possible City recourse as to areas of non-compliance.
- 9) Consideration of request for report from staff related to listing of City Councilmembers who have served on the Terrace Gardens Board of Directors
- 10) Consideration of the City Council requesting to have Terrace Gardens legal representative make a presentation before the City Council.

Recommendation: Consider the agenda items and provide staff with direction as to specific action items.

XVIII. NEW BUSINESS

10. Receive Update on Midtown Transit Sub-Area Visioning Project for the 364-acre Area Around the Light Rail and Future Montague/Capitol BART Stations (Staff Contact: Tambri Heyden, 586-3280)

Background: At the January 27, 2005, Council Transportation Subcommittee, staff provided another update of the status of the Midtown Transit Sub-Area visioning project that includes such key locations as the Great Mall, the Waukesha properties, the McCandless and Centre Point Business Parks and Midtown's south precise plan area where many trucking and automotive-related uses exist on numerous small parcels. The update included a presentation providing additional information than was available at the time of the January 19, 2005 project update memorandum to the Council.

At the Subcommittee meeting, the Subcommittee requested that staff give the same presentation to the entire Council at their next meeting, prior to coming to the Council in March for presentation of the final alternative concept plans. The presentation provided information regarding beneficial ownership patterns; market capacity and trends; 5-, 15- and 30-year development and redevelopment opportunities based on feedback from stakeholder interviews, in addition to an explanation of three preliminary alternative concept plans that include residential, retail, entertainment/attractions facilities – important land use components to ensuring the long term viability of the Great Mall and maximizing the significant BART station capital investment.

The three alternative concept plans attached to the Council's January 19th memorandum have been critiqued at the January 20, 2005 stakeholder workshop and will be revised for discussion at the next stakeholder charette on February 17, 2005, as well as at a February 22, 2005 community meeting. Since this four-month process will not result in a comprehensive transit area plan, complete with environmental clearance, design guidelines and general plan, specific plan and zoning code amendments, when the final conceptual plan alternatives are presented to the Council in March, direction will be needed regarding whether to proceed with phase II during which these documents would be prepared. Although the City has been awarded a \$150,000 VTA grant for phase II, the estimated \$325,000 needed to complete phase II would need to be funded out of the Redevelopment Agency fund in FY 05-06 or through stakeholder contributions. However, with

Council action in March, the City will have a much needed product that can be used by staff to evaluate new development to ensure it fits within the long term vision and does not preclude future options.

Recommendation: Note receipt and file the status report.

11. Receive Update on the Expansion (Phase II) of the Calpine Los Esteros Critical Energy Facility, Peaker Plant, Located West of the City of Milpitas Across Coyote Creek in the City of San Jose (Staff Contact: Troy Fujimoto, 586-3287)

Background: In 2001, the Calpine Corporation made an application to the California Energy Commission (CEC) for review and approval of the Los Esteros Critical Energy Facility in north San Jose. In this application it was identified that this was the first of three phases for the ultimate build-out of the site. Phase 1 is a 180-megawatt (MW) natural-gas-fired, single-cycle generating facility.

In early 2004, the City was notified that Calpine had filed an Application for Certification for Phase 2 with the California Energy Commission. Subsequently, at the request of the City Council, in May 2004 staff presented an update of the status of the architectural treatment and landscaping for the facility.

Phase 2 of the project consists of increasing the output of the facility to 260 megawatts (MW) and would consist of improvements to convert it into a combined cycle generating facility. Improvements at the site include installation of new cooling towers, additions to the switchyard, new water pumps, generators, and other equipment necessary to accommodate the conversion. Included in the Council's packet is a background memorandum with additional information on the settlement agreement between the City and Calpine.

Recommendation: Note receipt and file.

*** 12. Direct Staff To Enter Discussions With Ola's Exotic Coffee Inc. On Expansion Incentives (Staff Contact: Cindy Maxwell, 586-3282)**

Background: Ola's Exotic Coffee Inc. is expanding their operations to include manufacturing and is considering a site in Milpitas. They would like to explore whether there is any economic assistance the City can offer that would be an incentive to expand their operations in Milpitas. Their request letter is included as an attachment to the mailed Council agenda.

Recommendation: Direct staff to enter discussions with Ola's Exotic Coffee Inc. regarding economic assistance incentives that may be available.

*** 13. Approve the Budget Transfer of \$3,100.00 from Holding Account HA 1377-2500 to 100-163-4221 to Purchase Child Abuse Prevention Magnets/Lapel Pins (Bonnie Greiner, 586-3225)**

Background: Staff applied for a grant of \$3,100.00 from the *Lucile Packard Foundation for Children's Health* to be used to purchase Child Abuse Prevention magnets and lapel pins. Each year, during the month of April, the City of Milpitas actively strives to bring attention to the complex topic of child abuse prevention. Our outreach activities include: City Council proclamation designating April as National Child Abuse Prevention Month, child abuse prevention tips, televised City Council presentation of the Children's Welfare League of America Children's Memorial Flag and public display of this flag for the month, a paragraph on the City website home page, and a newspaper article in the local newspaper, The Milpitas Post. For April 2005, we plan to extend our program to include printing and distributing 10,000 magnets highlighting the five Rs (child abuse prevention tips) and the local child abuse reporting hotline phone number. The magnets and pins will be distributed to Milpitas families via public schools,

child care programs, family child care providers, local Community Centers, the Milpitas Community Library and selected medical facilities. The benefit to our neighborhood is increased public awareness and information regarding child abuse prevention, with the ultimate goal of improving the health and well being of our most vulnerable citizens, our children.

Recommendation: Approve budget transfer of \$3,100.00 from holding account HA 1377-2500 to 100-163-4221 to purchase Child Abuse Prevention Magnets and Lapel Pins.

XIX. ORDINANCES (None)

XX. RESOLUTIONS

- * 14. Adopt Resolution Granting Approval to Submit a Grant Application to the Federal Emergency Management Agency for the 2005 Pre-Disaster Mitigation Grant Program: Sports Center Gym Improvements (Project No. 8160) (Americo Silvi, 586-2810 and Greg Armendariz, 586-3401)**

Background: The Milpitas Sports Center Gym Improvements project is included in the current 5-year Capital Improvement Program (CIP). The improvements involve reconstruction of the gym flooring, adding an air-conditioning system and other gym related improvements. More recently, Fire department staff has identified a Federal Emergency Management Agency's (FEMA) 2005 Pre-Disaster Mitigation (PDM) Grant Program, that would fund structural evaluation, analysis and engineering design and infrastructure improvements (if required) to upgrade existing facilities to an Emergency level care and shelter facility. These improvements will allow the building to meet acceptable building code requirements for an Emergency Care and Shelter facility. Once the gym meets acceptable code standards, the City can then declare it as an official Emergency Care and shelter facility.

Staff has attended a workshop to obtain information on the grant, including eligibility requirements, process and procedures and deadlines. The FEMA PDM Grant Program is a competitive grant with state agencies, local government agencies, and tribal governments vying for approximately \$255 million in available funds. FEMA will score all eligible planning and project sub-applications on the basis of predetermined, objective, quantitative factors to calculate a National Ranking Score. National panels, chaired by FEMA and composed of representatives from FEMA Headquarters and Regions, other Federal agencies, states, and Indian tribal governments, will convene to evaluate planning and project sub-applications on the basis of additional predetermined qualitative factors to determine a National Evaluation Score. If successful, a grant amount of up to \$3,000,000 could be awarded by FEMA with a cost-share of 75% Federal funds and 25% local funds.

Recommendation: Adopt Resolution granting approval to submit a grant application to the Federal Emergency Management Agency (FEMA) for the 2005 Pre-Disaster Mitigation Grant Program.

- * 15. Adopt Resolution Granting Approval to Submit a Grant Application to the Federal Emergency Management Agency For the 2005 Pre-Disaster Mitigation Grant Program: South Milpitas Water Line Replacement, Project No. 7098 and Water System Seismic Improvements (Project No. 7100) (Staff Contact: Doug De Vries, 586-3313)**

Background: The South Milpitas Water Line project is included in the current five-year Capital Improvement Program. The project will replace approximately 4,800 linear feet of 16-inch diameter steel water main, in South Milpitas Boulevard between East Calaveras Boulevard and Yosemite Drive, which is reaching the end of its useful life.

The engineering and fire department staffs have identified a federal grant program opportunity [Federal Emergency Management Agency's (FEMA) 2005 Pre-Disaster Mitigation (PDM) Grant Program] that would fund the installation of specially engineered pipelines in areas subject to

faulting, liquefaction, earthquake-induced land sliding, or other earthquake hazards. City staff, through a Water System Seismic Improvement Study, has evaluated the installation of specially strengthened pipelines along primary pipeline mains, including those along South Milpitas Boulevard, that are critical to maintaining service and fire protection within the city domestic water distribution system. These improvements increase the health and safety reliability of the water system by reducing the number of breaks along these critical pipelines during major seismic events. Reducing the number of breaks preserves fire protection capability, thereby protecting life and property and reducing potential economic losses. In addition, key emergency pipeline repair parts that are needed to perform repairs and restore services throughout other parts of the water distribution system are also being considered for inclusion in the project.

The FEMA PDM Grant Program is a competitive grant with state agencies, local government agencies, and tribal governments vying for approximately \$255 million in available funds. FEMA will score all eligible planning and project sub-applications on the basis of predetermined, objective, quantitative factors to calculate a Ranking Score. A grant amount of up to \$3,000,000 could be awarded by FEMA with a cost-share of 75% Federal funds and 25% local funds for qualifying projects. This proposal is to apply for a FEMA grant for the South Milpitas Pipeline Replacement Project. The Capital Improvement Program includes adequate funds for the local share of the project.

Recommendation: Adopt resolution granting approval to submit a grant application to the Federal Emergency Management Agency for the 2005 Pre-Disaster Mitigation Grant Program and Adopt Resolution of Local Support for the South Milpitas Water Line Improvements.

*** 16. Adopt Resolution Granting Initial Acceptance: Interim Senior Center Kitchen and Internal Improvements (Project No. 8151) (Staff Contact, Mark Rogge 586-3403)**

Background: This project provided a new kitchen, remodeled restrooms, game room, accessible front desk & entry, staff offices, and other internal improvements at the Interim Senior Center on Abel Street. The City Council awarded the project to Ranis Construction and Electric on July 6, 2004. The project has been successfully completed, and staff recommends that Council grant an initial acceptance and authorizes the reduction of the contractor's faithful performance bond to 10% of the contract amount or \$20,224.72.

Recommendation: Adopt resolution granting initial acceptance of the project subject to the one-year warranty period and reduction of the faithful performance bond to \$20,224.712.

*** 17. Adopt Resolution Granting Final Acceptance: Main Fire Station Replacement (Project No. 8089) (Staff Contact: Greg Armendariz, 586-3401)**

Background: This project, which was initially accepted on February 4, 2003, has passed the one-year warranty period. A final inspection has been made and the public improvements that include complete replacement of the Main Fire Station located at 777 South Main Street. Therefore, a final acceptance may be granted and the contractor's bond may be released.

Recommendation: Adopt resolution granting final acceptance and release of the bond.

XXI. BIDS AND CONTRACTS

*** 18. Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals: 2005 Street Resurfacing Project (Project No. 4223) (Staff Contact: D. De Vries, 586-3313)**

Background: Plans and specifications for the subject project have been completed in accordance with the approved five-year Capital Improvement Program (CIP). The project consists of roadway reconstruction on Acadia Avenue, Glacier Drive, Mt. Diablo Avenue, Portola Drive, a 100' section of Mt. Shasta Avenue west of Park Victoria Drive, roadway resurfacing on McCarthy Boulevard between Montague Expressway and Barber Lane, and on Evans Road

between Calle Oriente and Kennedy Drive. The Engineers estimated construction cost for the work is approximately \$800,000. Project schedule anticipates award for construction in April 2005. A budget appropriation will be proposed once bids are received and a contract award is presented to Council and funds are available in the Street Fund. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

Recommendation:

1. Approve plans and specifications
2. Authorize advertising for bid proposals.

*** 19. Authorize Interim City Manager to Execute Agreement Amendment #2: CalRecovery, Inc. (Staff Contact: Darryl Wong, 586-3345)**

Background: On March 16, 2004, the City Council approved a consultant contract to CalRecovery, Inc. for professional odor control advisory services. Amendment #1 was awarded on June 15, 2004 to cover additional services including collection and analysis of meteorological data and potentially malodorous materials, conduct testing of odor additives, and assistance on a contingency plan.

Due to ongoing odor episode potential and expertise needs, staff has negotiated a scope and fee for additional services not to exceed \$17,700. Additional services would be for continued professional assistance on an as needed basis, for odor action plan updates, meteorological data analysis, identification of potential operational odor sources and corrective options at stakeholder facilities, odor complaint evaluations and correlations, and other analyses related to odor control and management. There are sufficient funds in the Engineering operating budget to cover this additional expense.

Recommendation: Authorize the Interim City Manager to execute agreement amendment #2 with Cal Recovery, Inc. for odor control advisory services for \$17,700 bringing the not to exceed amount to \$52,200, subject to approval as to form by the City Attorney.

*** 20. Approve Grant Augmentation and; Approve Contract Change Order; Coyote Creek Trail, Reach 1 (Project No. 4206) (Staff Contact: Greg Armendariz, 586-3401)**

Background: On February 1, 2005, the City Council awarded a construction contract for Coyote Creek Trail, Reach 1 to GradeTech, Inc. This project is funded in part by a \$340,000 San Francisco Bay Trail grant administered by the Association of Bay Area Governments (ABAG). Recently, staff requested and ABAG has authorized a grant augmentation of \$51,000, revising the total grant amount to \$391,000. This additional grant funding involves the same requirements noted in the City's existing grant agreement with ABAG.

With additional funding available in the project budget, a desired bid alternate can be added to the construction scope. Bid Alternate No. 1B, which was not included in the construction contract, provides for addition of trail amenities at the Ranch Drive trail entry. The amenities include a stone seatwall gathering area, gateway sign, bench, trash receptacle, and bike racks. The amenities will be located at the trail head near the intersection of McCarthy Boulevard and Ranch Drive. The bid price for this alternate is \$57,000, which is deemed reasonable. The funding increase resulting from the ABAG grant augmentation will allow the Bid Alternate 1B work to be added by a change order. \$51,000 of the proposed change order is subsidized by the grant increase, and the remaining \$6,000 is available within existing project funding. Staff recommends that the City Council approve the \$51,000 grant augmentation, appropriate \$51,000 to the project budget, and approve a contract change order adding Bid Alternate No. 1B to the construction contract.

Recommendation: The following actions are recommended for Coyote Creek Trail, Reach 1, Project No. 4206:

1. Approve a grant augmentation of \$51,000 from Association of Bay Area Governments and approve appropriation of this grant funding to the project budget;
 2. Approve the Acting Assistant City Engineer to execute a contract change order with GradeTech, Inc. adding Bid Alternate No. 1B to the construction contract at a cost of \$57,000;
- * 21. **Authorize the Acting Assistant City Engineer to Execute Amendment to Pacific Gas & Electric Company Authorization Letter, Approve Agreement Amendment, Korve Engineering; Approve Budget Appropriation: Abel/Calaveras Right Turn Lane Project (Project No. 4186) (Staff Contact: Julie Waldron, 586-3314)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The completed project provides a right turn lane from northbound Abel Street to eastbound Calaveras Blvd.

On November 2, 2004, Council approved an agreement with PG&E to relocate and adjust PG&E facilities within the project area. After further field review, PG&E has determined that additional engineering and relocation work including the purchase of a new utility box, previously thought to be reused and therefore not included in the initial payment to PG&E, must be completed to relocate the PG&E facilities within the project area. Staff has negotiated a scope and fee with PG&E for the additional engineering and construction costs in the amount of \$14,335.00, which is considered reasonable for the work.

On March 29, 2002, City Council awarded a consultant contract to Korve Engineering for the design of Right Turn Lane at Abel/Calaveras. Korve Engineering has performed additional services due to lengthy Caltrans permit process resulting from the closure of the Caltrans San Jose office during the permit review process for this project, including a rebid of the project. An agreement amendment is proposed for these additional services. Staff has negotiated a scope and fee for these services of \$39,065, which is considered reasonable for the work. Approval of the agreement amendment is recommended.

At the time of project award, the Council was advised that a budget appropriation would be necessary to fully fund this project. On January 18, 2005, the Council approved the KB Development Agreement and Infrastructure Fund, which provides for a developer contribution of \$1,000,000 for traffic mitigations along Calaveras Blvd. including work to be done by this project. An appropriation from this developer contribution, in the amount of \$497,538 is necessary from this source to complete this project. A summary of the budget allocation required is provided in the table below:

Description	Allocation
PG&E Amendment	\$ 14,335.00
Korve Engineering Agreement Amendment	\$ 39,065.00
Right of Way	\$200,000.00
Construction inspection & Testing	\$100,000.00
Construction Contingency	\$144,138.00
Total	\$497,538.00

Recommendation:

1. Authorize the Acting Assistant City Engineer to execute amendment to authorization letter with Pacific Gas & Electric Company in the amount of \$14,335, subject to approval as to form by the City Attorney.
2. Approve agreement amendment with Korve Engineering in the amount of \$39,065.00, subject to approval as form by the City Attorney.
3. Approve budget appropriation in the amount of \$497,538, from the KB Infrastructure fund.

- * 22. **Authorize the Interim City Manager to Execute the Agreement: HMH Engineers, South Park Victoria Drive Pavement Rehabilitation (Project No. 4225) (Staff Contact: Doug De Vries, 586-3313)**

Background: This project is included in the current five-year Capital Improvement Program (CIP). The work will involve the design and construction of major roadway reconstruction of Park Victoria Boulevard between Calaveras Boulevard and Yosemite Drive between Saratoga and Big Basin Drives. Specifically, the work includes placing rubberized asphalt concrete overlay, localized full depth asphalt concrete repairs, cold planning, replacement of traffic detector loops, sealing of cracks and replacement of painted markings on South Park Victoria Drive between Calaveras Boulevard and Yosemite Drive and between Saratoga and Big Basin Drives. An application has been filed with Santa Clara Valley Transportation Authority for Federal Surface Transportation Program (STP) grant funds for Local Streets and Roads Rehabilitation Projects in 2005/06 and 2006/07. The available amount of funds provided by this grant, when awarded, is \$497,412.

In accordance with the City's consultant selection process, HMH Engineers was selected to provide professional Engineering services required to design the improvements for this project. Staff has negotiated a scope and fee for these services not to exceed \$146,460, which is considered reasonable for the work. There are sufficient funds in the project budget to cover this additional expense.

Recommendation: Authorize the Interim City Manager to execute the agreement amendment with HMH Engineers, in the amount of \$146,460, subject to approval as to form by the City Attorney.

- * 23. **Approve Purchase of Replacement Digital Voice Recorder for the 911 Emergency Communications Center (Staff Contact: Bill Marion, 586-2701)**

Background: The Emergency Communications Center records all telephone and radio traffic and stores this data for a statutorily mandated period of time. This data is often needed internally by the Police and Fire Departments, is requested by the District Attorney's Office as case evidence or subpoenaed in Court cases. The existing equipment is over 5 years old and has recently experienced several hardware failures. The recording system has become increasingly unreliable and is in need of replacement. The Communications Center staff has reviewed replacement options and has recommended the Voice Print system because of its architecture, data redundancy and intuitive user interface. Contact with other Voice Print customers has been positive, citing ease of use, product reliability and responsive service. Voice Print is an approved supplier on the California Multiple Award Schedules (CMAS) program and has submitted a CMAS quote for replacement of the recording system. Total cost of the replacement equipment plus tax and one year of maintenance is \$33,637.39. Municipal Code section I-2-5.06 "Purchase Through a Governmental Entity" allows the City to make purchases through the competitively bid procurements of other governmental entities and satisfies the requirements for competitive bidding.

Recommendation: Approve the purchase of a voice logger/recorder from Voice Print International Inc., in an amount not to exceed \$33,637.39. Funds are available in the Enhanced Public Safety Project, (CIP#3389).

XXII. CLAIMS AND DEMANDS

- * 24. **Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Chris Schroeder, 586-3161)**

Background: In accordance with direction given by City Council at its August 15, 1995 meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$13,175.00 to Nazak Construction for emergency Fire Station Deck Repair. The deck that is directly over the O.E.S. office has been leaking for several years. A few months ago a leak test was conducted to determine if in fact the leaks were from the deck or elsewhere. The test confirmed the leaks were from the deck. The deck repair was included in the settlement agreement on the Main Fire Station, as this has been a deficient item since it was constructed in 2000. The work was performed as an emergency under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent" due to the multiple heavy leaks caused by the current rainy weather (Funds are available from Project No. CP8135 Miscellaneous Building Improvements for these services.)
2. \$12,563.58 to FJM Bering Truck Center for emergency repairs to Fire Engine-3 #41. Engine-3 #41 is a 1994 Pierce Fire Engine with 4 wheel disk air brakes. About a month ago the brakes started smoking slightly so the unit was brought in for an inspection. It was discovered that the transmission retarder, a key safety component that enables the unit to brake against its own engine, thereby greatly increasing the unit's ability to stop quickly and also significantly reducing wear on the disk brakes, had failed internally. Engine-3 #41 is a frontline engine used almost everyday and essential to the effective operation of Station No. 3. While the retarder was out it was also discovered that the step supports had cracked again. Past attempts to repair them in the fire station had failed because complete access to the step support base could not be gained with the retarder in the way. Therefore, although not an emergency, repair to the step supports was performed at the same time. Both repairs were performed under section I-2-5.04 of the Municipal Code "Emergency Authority of Purchasing Agent". (Funds are available from the Fleet Maintenance budget for these repairs.)

Recommendation: Approve the purchase requests.

XXIV. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, MARCH 1, 2005, AT 7:00 P.M.**